

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

MICHAEL BERTOLINO,

Plaintiff,

v.

Civil Action No. 3:04-CV-121

JO ANNE B. BARNHART,
COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

**MEMORANDUM, OPINION, AND ORDER CONFIRMING THE PRONOUNCED
ORDER OF THE COURT**

On June 2, 2005 came Mrs. Bertolino, Plaintiff's wife, in person, Karl Osterhout, counsel for Plaintiff and Helen Campbell Altmeyer, counsel for Defendant Commissioner of Social Security for an evidentiary hearing and argument on Mr. Osterhout's Motion to Withdraw. The Court questioned Mr. Osterhout concerning the standards of the West Virginia Rules of Professional Conduct for withdrawal of counsel.

I. Findings of Fact

1. Counsel's representation will not result in violation of the rules of professional conduct or other law.
2. Counsel's physical or mental condition will not materially impair his ability to represent the Claimant.
3. Claimant has not discharged Counsel.
4. Claimant has not persisted in a course of action involving Counsel's services that Mr.

Osterhouf believes is criminal or fraudulent.

5. Claimant has not used services of Counsel to perpetrate a crime or fraud.
6. Claimant has not insisted upon pursuing an objective that is considered repugnant or imprudent.
7. Claimant has not failed to substantially fulfill an obligation to Counsel regarding services rendered.
8. Counsel's representation in this case will not result in an unreasonable financial burden to him, nor will it be rendered unreasonably difficult by Claimant.

II. Conclusion

The standards for withdrawal of counsel are governed by Rule 1.16 of the West Virginia Rules of Professional Conduct. Based upon responses to the standards of 1.16 set forth above, no good cause exists for counsel to withdraw. Accordingly, the motion to withdraw is denied.

III. Other Matters

Mr. Osterhaut is not a member of the bar of this Court. Mr. Osterhaut was ordered to file a *pro hac vice* application in this action by June 9, 2005.

The Clerk of the Court is directed to mail a copy of this Order to parties who appear *pro se* and any counsel of record, as applicable.

DATED: June 3, 2005

/s/ James E. Seibert

JAMES E. SEIBERT

UNITED STATES MAGISTRATE JUDGE